

**CASE SCHEDULED FOR ORAL ARGUMENT ON SEPTEMBER 19, 2022
No. 21-7078**

IN THE
**United States Court of Appeals
for the District of Columbia Circuit**

STATE OF NEW YORK, *et al.*,
Plaintiffs-Appellants,

v.

META PLATFORMS, INC.,
Defendant-Appellee,

On Appeal from the United States District Court for the District of Columbia,
No. 1:20-cv-03589, Hon. James E. Boasberg

**UNOPPOSED MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE IN SUPPORT
OF PLAINTIFFS-APPELLANTS**

Pursuant to Federal Rule of Appellate Procedure 29(a)(8) and D.C. Circuit Rule 34(e), the United States respectfully requests the Court's permission to participate in oral argument as amicus curiae in support of plaintiffs-appellants. The United States requests an allotment of ten (10) minutes of time. Plaintiffs-appellants consent to the United States' participation at oral argument and further consent to allocating the United States 10 minutes of their time if their motion for at least twenty-five (25) minutes of total argument time per side is granted. Defendant-appellee has taken no position on this motion and will not file a response.

The United States enforces the federal antitrust laws and has a significant interest in their correct application. In particular, the prohibitions against monopoly

offenses in Section 2 of the Sherman Act are becoming increasingly important to antitrust enforcement in the digital economy. The district court's order dismissing the state plaintiffs' Section 2 claims, however, raises significant and unjustified barriers to Section 2 enforcement by incorrectly analyzing anticompetitive conditions to ongoing deals under the more onerous standards reserved for unconditional, unilateral refusals to deal. The United States therefore seeks argument time to address the proper scope of conduct subject to refusal-to-deal precedents (*Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985), and *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004)), and those precedents' proper interpretation in refusal-to-deal cases. The United States also will be prepared to address the errors in the district court's order regarding Section 2 remedies.

The United States thus respectfully requests the opportunity to participate in oral argument before this Court on September 19, 2022.

August 23, 2022

Respectfully submitted,

s/ Daniel E. Haar
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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A), and D.C. Circuit Rule 27(a)(2), because the body of the motion contains 276 words.

2. This motion complies with Fed. R. App. P. 27(d)(1)(E), and the typeface and type-style requirements of Fed. R. App. P. 32(a)(5)-(6), because the motion has been prepared in Microsoft Word 2010, using 14-point Times New Roman font, a proportionally spaced typeface.

s/ Daniel E. Haar
Daniel E. Haar
Counsel for the United States

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

All parties, intervenors, and amici appearing before the district court and in this Court are listed in the Brief filed by defendant-appellee, except for James Cooper, Luke Froeb, David Gelfand, Abbott Bennett Lipsky, Jr., Bilal Sayyed, Gregory Werden, J. Gregory Sidak, David J. Teece, Shana Wallace, International Center for Law and Economics, Henry N. Butler, Richard A Epstein, Thomas Hazlett, Justin (Gus) Hurwitz, Jonathan Klick, Thomas A. Lambert, Daniel Lyons, Geoffrey A. Manne, Alan J. Meese, Paul H. Rubin, Michael Sykuta, John M. Yun, Washington Legal Foundation, Information Technology and Innovation Foundation, Chamber of Commerce of the United States of America, Computer & Communications Industry Association, and Business Roundtable who appear before this Court as amici curiae supporting defendant-appellee. In this Court, the United States appears as amicus curiae supporting plaintiffs-appellants.

B. Rulings Under Review

References to the ruling at issue appear in the Brief for defendant-appellee.

C. Related Cases

A list of related cases appears in the Brief for defendant-appellee.

s/ Daniel E. Haar
Daniel E. Haar
Counsel for the United States

CERTIFICATE OF SERVICE

I certify that on August 23, 2022, I caused the foregoing to be filed through this Court's CM/ECF system, which will serve a notice of electronic filing on all registered users.

s/ Daniel E. Haar
Daniel E. Haar
Counsel for the United States